IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 533 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

PRATAPSINH S JADEJA

Appearance:

Mr. D.N. PATEL, ADDL. PUBLIC PROSECUTOR for appellant

NOTICE SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 21/08/98

ORAL JUDGEMENT

State has preferred this appeal against the order of acquittal recorded by Chief Judicial Magistrate, Jamnagar in Criminal Case No. 2435 of 1987 on 10.4.1990 wherein the accused were tried for offences punishable under section 498.A and 114 of the Indian Penal Code.

2. Short facts of the case are as under:-

2.1 Shantaben Pratapsinh, who is examined as PW. No.4 is the wife of respondent No.1 (hereinafter referred to as the original accused No.1). The marriage took place before about 15 years. However, after about 7 years from the date of marriage, on account of ill-treatment, she was driven away. Since thereafter, for about 7 years, she stayed with her parents. It is further alleged by the said witness that respondent No.2 Jyotsanaben (hereinafter referred to as the original accused No.2) was residing since about 7 years with the accused No.1 as his mistress. It transpires that in a proceeding initiated for maintenance, there was a settlement and thereafter Shantaben PW.4 stayed for about a period of one year with the accused No.1, and it is the prosecution case that even during this period, accused No.2 was residing with accused No.1. It is further alleged that on account of ill-treatment, she took poisonous substance used for killing bed bugs. After she was discharged from hospital, she again joined her husband. Accused No.2 was also residing at that time with the accused No.1. She has further stated in her testimony before the Court that after about a period of one and a half months, she was again ill-treated and was driven out from the house of accused No.1, and since then Shantaben is residing with her parents. Prosecution examined relevant witnesses, and on appreciation of evidence, the trial Court came to the conclusion that as no details are given about the alleged ill-treatment, no reliance can be placed. The Court was of the view that in the absence of any details about the ill-treatment, it is difficult to come to the conclusion that the alleged behaviour of accused No.1 could come within the purview of 'cruelty' as defined in section 498.A of the Indian Penal Code. Ultimately, the trial Court acquitted the accused persons.

3. Mr. D.N. Patel, learned Additional Public Prosecutor could not point out any evidence worth connecting the accused No.2 with the crime. Merely because she was residing with the accused No.1, it cannot be said that she was guilty of the offence for which she was charged. There is nothing in the evidence to indicate that the accused No.2 has abated in any manner whatsoever. Except the evidence indicating that the accused No.2 was residing with the accused No.1, there is not a whisper to indicate how there is an abatement. Shantaben, in paragraph 2 of her evidence, has specifically stated that the accused No.2 did not do anything to her. In her oral testimony, she has not pointed out anything by which even a doubt can be raised

about the accused No.2. In view of this state of evidence, the order insofar as accused No.2 is concerned is required to be confirmed.

4. So far as accused No.1 is concerned, there is no satisfactory evidence led by the prosecution indicating that the accused No.1 can be held guilty for an offence punishable under section 498 of the Penal Code. In the instant case, marriage took place between Shantaben PW.4 and the accused No.1 before about 15 years. Shantaben decided to go back to her husband and resided with him after a period of seven years knowing full well that the accused No.2 was residing with the accused No.1. Ordinarily, one would not like to stay with a husband if another woman is residing with him as a mistress. Not only that, but in the instant case, even if we accept the theory put forth by Shantaben for the time being that she took poisonous substance because of the torture or ill-treatment, the same cannot be accepted in view of the fact that she had gone back to the accused No.1, her husband, after she was discharged from the hospital. The fact that she decided to reside with her husband clearly indicates that the story put forward before the Court of taking poisonous substance because of harassment is not acceptable, and the trial Court has rightly not accepted the same. In the instant case, the prosecution has not produced the Investigating Officer before the Court as a witness. In the cross-examination, specific question has been put to Shantaben PW.4 indicating that just before taking glucose in a small bowl, poisonous drug used for killing the beg bugs was taken out in the same bowl for the use and thereafter by mistake in the same bowl Glucose with water was prepared and she took. Before the police she has not stated that her husband was ill-treating her and because of the torture, she has taken poisonous substance. It was the duty of the prosecution to examine Investigating Officer and the prosecution has failed in discharging its duties to produce the police officer who recorded her statement. No explanation is given by the prosecution for not examining this witness. In the absence of examination of that police officer, contradictions could not be proved. It was the duty of the prosecution to examine the relevant witnesses and the investigating officer who has recorded the statement of a witness. He is a relevant witness. The witnesses who are contradicted with their police statement in material particulars may raise a doubt about the prosecution version, and, therefore, to prove such a contradiction, it was the duty of the prosecution to examine such officer before the Court. Nanaba PW.1, mother of Shantaben, has deposed that even

after her daughter regained consciousness, she did not tell anything to her. According to her version, even after Shantaben came from the house of her husband, she did not tell as to why she returned from the house of the husband. So far as the charge is concerned, that refers to taking poisonous substance because of ill-treatment. There is no charge that after she was discharged from the hospital, when she was staying with her husband, she was ill-treated in the manner so as to say that the ill-treatment can be said to be 'cruelty' within the purview of section 498 of the Indian Penal Code. In view of absence of charge, now it will not be possible to take into consideration that story. And again, with regard to the second part of the story, that to say leaving the house of the husband, there is no satisfactory evidence that even at that point of time, she was ill-treated.

5. After having gone through the records and heard learned Additional Public Prosecutor, I am in agreement with the view taken and findings arrived at by the learned trial Judge. I am, therefore, not discussing the evidence of each witness in detail in view of the observations made by the Honourable Supreme Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417, which reads as under:-

> " .... This Court has observed in Girija Nandini Devi v. Bigendra Nandini Choudry (1967) 1 SCR 93 : (AIR 1976 SC 1124) that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice".

6. This is an appeal against the order of acquittal, The Court has carefully gone through the evidence which was suggested to be read by learned Additional Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1). the view of the trial judge as to the credibility of the witnesses; (2). the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact

that he has been acquitted at the trial; (3). the right of the accused to the benefit of any doubt, and, (4). the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses (See AIR 1934 PC 227).

In the result, the appeal fails, and is hereby dismissed.

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